ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING September 13, 2016

A public hearing of the Zoning Board of Adjustment was held on Tuesday, September 13, 2016 at 6:30 PM in Room 208, City Hall.

Members in attendance were:

Gerry Reppucci, Chair Jack Currier JP Boucher

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Reppucci explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Reppucci explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Reppucci also explained procedures involving the timing light.

1. Moavenian Realty, LLC (Owner) Dr. Nader Moavenian/New Hampshire Oral & Maxillofacial Surgery (Applicant) 33 Trafalgar Square (Sheet G Lot 653) requesting variance to exceed maximum number of wall signs, 3 permitted, 3 existing - 1 additional wall sign requested on north building elevation. GB Zone, Ward 2. [TABLED FROM 8-9-16 MEETING]

Voting on this case:

Gerry Reppucci J.P. Boucher Jack Currier

MOTION by Mr. Reppucci to take the request off the Table.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

Barbara Warmke, GrayCat Design. Ms. Warmke said that they want to put the sign on the north side of the building, which has no signage on it. She said that they did calculate the square footage, and it's within the allowable guidelines for wall sign area.

Mr. Reppucci said that the only item before the Board is the number of wall signs, where three are allowed, and one extra sign is proposed.

Mr. Falk agreed, he said it's just a request for the number of wall signs. He clarified why the case was tabled in the first place, and everything as far as the advertisement and notifications are still the same.

Mr. Falk said that the applicant removed the previously shown rectangular sign on the north building wall, and reduced the size of the text line between the first and second floor.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner as advertised. Mr. Currier said that the variance is needed to enable the applicant's proposed use of the property, which is maintaining the oral surgery business, and the applicant is seeking to improve the signage on the north end of the building, where, by testimony, there were patients coming and would have a tough time identifying the building.

Mr. Currier said that the proposed signs would be within the spirit and intent of the ordinance, with the way the windows are oriented, the signs on the front of the building are split up into three signs, and the Board notes that the square footage is within the maximum amount.

Mr. Currier said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

2. Jose G. Balderas (Owner) 65 Nagle Street (Sheet 102 Lot 201) requesting variance for minimum lot area, 7,077 sq.ft existing, 12,446 sq.ft required - to convert a single-family home into a two-family home. RB Zone, Ward 6. [TABLED FROM 8-23-16 MEETING]

Voting on this case:

Gerry Reppucci Jack Currier JP Boucher

Mr. Reppucci said that the Board tabled this to just the public meeting.

MOTION by Mr. Reppucci to take the request off the Table.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

Mr. Reppucci said that after hearing the testimony last time, and one of the neighbors indicated that there was a subdivision in 2005, this was all confirmed by the Planning Department, with a copy of the plan, and the meeting minutes. He said it was well worth the tabling. He said that there was a restriction placed on the property, and since there was a restriction placed on this property in 2005 by the Planning Board, he said he's inclined to not approve it. He said that this stipulation was made by another Board, and we'd have to have a really good reasoning to go beyond what the Planning Board stipulated. He said he's not sure that any of the circumstances have changed.

Mr. Currier said he feels the same way. He said if there was a compelling reason, or substantial change that would warrant it, but doesn't see that happening, the neighborhood really hasn't changed. He said that he didn't see any compelling change. He said that the testimony was that a family member was staying there, so maybe it can be accomplished through a special exception for a family member, not a variance for a two-family, so the applicant can possibly still get what they want. He said he's not finding support and the Board doesn't want to increase the density beyond the allowable point.

Mr. Reppucci said that Mr. Boucher wasn't at the original

hearing, but has familiarized himself with the case, and is able to vote.

Mr. Boucher said that he did review the case, and found that the information submitted by the Planning Department to be a compelling piece for the Board. He said the neighborhood really hasn't changed, and said that he couldn't support the application. He said that there may be other alternatives for them to get what they want.

Mr. Reppucci said he thinks the applicant would do well that they get some professional guidance and advice going forward if they decide to pursue something on this property. He said it would be wise of them to get professional guidance, sometimes things can get complicated.

MOTION by Mr. Currier to deny the application as advertised on behalf of the owner as advertised. Mr. Currier said that the variance is not needed and not appropriate in this situation, primarily for two reasons, the biggest reason for the discussion is that when this property was subdivided in 2005, it specifically states that the existing two-family would be converted to a single-family, and it's been that way up to today, so that transfer did happen, it is a single-family and there was another house built on the other portion of the property, and this Board finds that is reasonable density for the area, and there's not an exceptional reason to increase the density beyond what's stated in our zoning criteria already.

Mr. Currier said that the proposed use would not be within the spirit and intent of the ordinance, there's still the opportunity for a special exception for a family in-home dwelling that could accomplish what the applicant testified for.

Mr. Currier said that there was testimony that the two-family would adversely affect property values. He said it is contrary to the public interest, and that substantial justice is served by not approving this variance.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

3. Daniel R. & Ann M. Cathcart (Owners) 10 Lancaster Drive (Sheet B Lot 1522) requesting the following variances: 1) to encroach 6 feet into the 20 foot required front yard setback on Robinhood Drive; 2) to encroach 15 feet into the 20 foot required front yard setback on Lancaster Drive; and 3) to exceed maximum driveway width within property, 21 feet existing, 24 feet permitted - up to 34 feet proposed - all requests to install a 14'x24' tent garage. R9 Zone, Ward 9. [TABLED FROM 8-9-16 MEETING]

Voting on this case:

Gerry Reppucci Jack Currier JP Boucher

MOTION by Mr. Reppucci to take the request off the Table.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

Daniel Cathcart, 10 Lancaster Drive, Nashua, NH. Mr. Cathcart said that upon the Board's recommendation, he said he worked with Mr. Falk of the concerns with the driveway. He said that he has applied for another variance to use a maximum space of 34 feet, in which the curb would stay the same width, and the driveway would be wider within the property.

Mr. Reppucci asked if applied for an entirely new variance, or is the old variance request just being modified.

Mr. Cathcart said it's a separate new variance.

Mr. Falk confirmed that the original two variances are still there, and there is an additional variance to have the driveway wider, but it would all be on Mr. Cathcart's property, the extra width would not impact the curb-cut width. He showed the Board where the extra pavement would be, and it would be up to 34 feet wide at the widest point. He said that the case was all readvertised, and re-notified. He said that he met with Mr. Cathcart, and they went over many different scenarios of how to accomplish their needs. He said that the proposal before the Board is the best way overall option to do this.

Further discussion ensued about the driveway.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner as advertised. Mr. Currier said that the hardship conditions are all met per testimony, and the special conditions of the property is that it is a corner lot, burdened with two front yard setbacks.

Mr. Currier said that with the driveway angled back, and not increasing the driveway width is within the spirit and intent of the ordinance.

Mr. Currier said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

4. Duane M. Smith, Tr., & DM Smith & AT Rev Trust (Owner) 93 Allds Street (Sheet 27 Lot 53) requesting variance for minimum lot area, 6,595 sq.ft existing, 12,446 sq.ft required, to convert an existing use of a laundromat with an apartment to a two-family dwelling. RB Zone, Ward 7.

Voting on this case:

Gerry Reppucci Jack Currier JP Boucher

Mr. Reppucci asked if the laundromat is still in business.

Atty. Prunier said that it is.

Mr. Reppucci said that since it's his own business, he wanted to

bring it out in the open about recusing himself for this case. He said he's compelled not to recuse, but wanted to offer it to the applicant.

Atty. Prunier said he has no objection to Mr. Reppucci hearing the case.

Attorney Gerald Prunier, Prunier & Prolman P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier said that although he will proceed, he's objecting to going forward without a full board. He passed out a packet of information to the Board.

Atty. Prunier said that the laundromat is presently being used, which is in the front, and the back part is an apartment. He said that the proposal is to do away with the laundromat, and making it an apartment, by going up one floor. He said that the area has multi-family buildings, and single-family. He said it is in the RB zoning district, which allows two-family buildings. He said that they're moving towards a more conforming use, by going from commercial to residential, it's more in character with the neighborhood, and is within the spirit of the ordinance, and it will improve the area's property values. He said that there is adequate parking, there is room for up to six parking spaces. He said that there will be less traffic in the area, too, than what presently exists.

Mr. Currier said that in the front area of the laundromat, it's all paved over, and asked if there was any thought of turning that area into a grassed area so it looks less commercial.

Atty. Prunier said that they haven't given it much thought, but said it would make sense to have it a grassed area in front of the building, to make it look more residential.

SPEAKING IN FAVOR:

Atty. Prunier said that he submitted three letters in support to the request, and they're in the package.

Mark Tymowicz, 6 Douglas Drive, Amherst, NH. Mr. Tymowicz said that they are in favor of the request, it would help the neighborhood to become more residential.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Reppucci agreed about the parking area in the front that Mr. Currier brought up.

Mr. Reppucci asked if the building addition on top of the laundromat would be in the setback, and if so, if it would have to come before the Board.

Mr. Falk said that this zone has a ten foot front yard setback, and he believes that they meet that. He said that they're making the property more conforming.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner as advertised. Mr. Currier said that the variance is needed to enable the applicant's proposed use of the property, which is converting the laundromat back to housing, and to make a two-family out of this unit. He said that they're adding a second story to it.

Mr. Currier said that the request is within the spirit and intent of the ordinance, as it's turning into a use that is in kind with the zoning.

Mr. Currier said that it will have no negative impact on surrounding properties, as it will be a home and not a business. He said it is not contrary to the public interest, and substantial justice is served to the owner.

Mr. Currier said for a special stipulation, the Board finds it's reasonable that there won't be parking immediately in front of the building like they have right now, and it wouldn't be a parking space in this front yard setback.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

5. Pamela J. Sardy (Owner) 16 Whitford Road (Sheet C Lot 377) requesting variance to exceed maximum fence height, 6 feet permitted, 9 feet proposed, for a 48-foot long section near the left side of the lot. R30 Zone, Ward 5.

Voting on this case:

> Gerry Reppucci Jack Currier JP Boucher

<u>Pamela Sardy</u>, 16 Whitford Road, Nashua, NH. Ms. Sardy said that she wants to put up a 9-ft tall wooden stockade fence on the side of the property by the pool, for privacy purposes. She said that her neighbors deck is elevated, so they can see down to the pool, and it'll give both of us some privacy.

Mr. Reppucci said that the Board needs a good reason to grant this, to justify changing the ordinance for this application.

Mr. Currier said that the abutter on the left (east), that home is higher than a typical two-story home, it has a walk-in basement. He said that the fence is also set in about 24 feet away from the property line, so it's not like its right at the property line. He said that the neighbor shouldn't be burdened by a Fort Apache-type wall that they have to look at. He said that the 9-ft height will seem low, because the neighbor will be looking at it from a taller deck area.

Mr. Falk said that even if the fence were to fall down, it would still be over 13 feet to the property line. He said that the people can also have accessory structures up to 20 feet in height, at 10 feet from the property line. He said that the length of the fence is only about a quarter of the length of the side yard.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner as advertised. Mr. Currier said that as variance is needed to enable the applicant's proposed use of the property, which is a reasonable blind for the existing pool, and given the special conditions of the property, which is the topography of the abutting property goes up, and it makes the house really tall, so while a 9-ft tall

fence is high, it's not impactful to the other neighbor, but it serves this property owner to enjoy their private use of their pool.

Mr. Currier said that the fence is within the spirit and intent of the ordinance.

Mr. Currier said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

6. Hunt Community (Owner) Barlo Signs (Applicant) 10 Allds Street (Sheet 16 Lot 16) requesting variance to exceed maximum ground sign area, 10 sq.ft permitted, 26.6 sq.ft existing - 42 sq.ft proposed, to replace existing ground sign. RB Zone, Ward 7.

Voting on this case:

Gerry Reppucci Jack Currier JP Boucher

Paul Martin, Barlo Signs, Hudson, NH. Mr. Martin said that they're looking to replace the existing non-conforming sign with a sign that's very like in kind, it's slightly over the existing square footage, and it'll be in the same position as the existing sign. He said that the sign will be mounted on the same steel as the existing one. He said it will be an externally lit sign.

SPEAKING IN FAVOR:

Keith O'Neill, Facilities Manager, Hunt Community, Nashua, NH. Mr. O'Neill said it's a massive front lawn, about 16 acres, and the sign will only be slightly larger.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Currier said that the existing sign at 10 square feet is

appropriately small, it's a fine size, and is good with the application, it's a reasonable size.

Mr. Reppucci said that the property could accommodate even a significantly larger sign, and has no problem with it at all.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner as advertised. Mr. Currier said that as variance is needed to enable the applicant's proposed use of the property, which is maintaining it as an adult community, and given the special conditions of the property, which is that it's a very large parcel with a very large front lawn, on two busy streets, and the Board finds that the existing sign and the proposed sign is reasonable, given the large lot and large building.

Mr. Currier said that the sign is within the spirit and intent of the ordinance.

Mr. Currier said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the Hunt Community for their sign.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

7. Kevin & Claire Bergeron (Owners) 5 Kingston Drive (Sheet 104 Lot 47) requesting variance to encroach 4 feet into the 10 foot required left side yard setback to construct an attached 18'x20' carport. RA Zone, Ward 6.

Voting on this case:

Gerry Reppucci Jack Currier JP Boucher

Kevin Bergeron, 5 Kingston Drive, Nashua, NH. Mr. Bergeron said he's asking to encroach 4 feet into the 10 foot left side yard setback. He said that it will be 18'x20', it will be open, and attached to the house, with the same roof pitch as the roof, it won't be a lean-to. He said it will be a wooden structure, and will match the house. He said it will help them a lot in the

winter months, to make it a little easier. He said he copied the design from a house across the street, which is a garage, but is using the same dimensions except for the walls.

Mr. Currier said that a special condition here is that the abutter on the side is minimalized because their driveway is on this side, so it won't block any view. He said that the proposed roofline of the carport is lower than the house, so it also negates any impact to the abutter.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner as advertised. Mr. Currier said that as variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, by testimony, the applicant is seeking to just have some roof cover with the carport, and the proposal is for a lower roofline, and the Board finds that the special conditions of the property are that there are analogous structures like this on the sides of houses in the neighborhood.

Mr. Currier said that the request is within the spirit and intent of the ordinance, and it will be in the character of the neighborhood.

Mr. Currier said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the owner to get in and out of their vehicles better in inclement weather.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

8. DSM MB I, LLC (Owner) Starlite Sign (Applicant) 375 Amherst Street (Sheet G Lot 398) requesting variance to exceed maximum wall sign area, 150 sq.ft permitted, 242 sq.ft proposed. GB Zone, Ward 2.

Voting on this case:

Gerry Reppucci Jack Currier JP Boucher

Carolyn Parker, Carolyn Parker Consulting, representing Starlite Signs. Ms. Parker showed the Board a chart of recommended sign sizes from distances to the street. She said Hobby Lobby will be using this space that Market Basket used to have. She said that Hobby Lobby is new to the area, she said it's like a Michael's store, with arts and crafts. She said that the store is 375 feet from the roadway, and the chart indicates how large the letters should be in order for them to be read.

Ms. Parker said that there would be three other words under the Hobby Lobby text. She said that the property has no pylon sign, or tenant sign, it states the name of the plaza only. She said that they are requesting the 48" high letters. She said that the Hobby Lobby text would be illuminated, and the text underneath it would not be lit.

Discussion ensued about the existing Hobby Lobby sign.

Mr. Falk said that they did get a sign permit for just the Hobby Lobby text.

Mr. Reppucci said that the application includes the whole Hobby Lobby sign, including the one that is up now, but believes that the request was advertised correctly with the correct sizes.

Mr. Currier agreed that it is correctly advertised.

Mr. Falk said that Market Basket had a larger sign, but since it's been down for quite some time, they lost their grandfathered status for the sign area.

Mr. Currier said that the variance granted for Market Basket was for 253 square feet, and the proposed Hobby Lobby sign would be 242 square feet.

Ms. Parker said that there are also a lot of trees by the road, which help to block the stores.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner as advertised. Mr. Currier said that as variance is needed to enable the applicant's proposed use of the property, which is a sign for Hobby Lobby. He said that the special conditions of the property is that the building is set back 375 feet from Amherst Street, and that a similar sized sign appropriately served the previous grocery store, and the proposed sign is less than the grocery store.

Mr. Currier said that the sign is within the spirit and intent of the ordinance to allow the 242 square foot proposal.

Mr. Currier said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the Hunt Community for their sign.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

9. Reynaldo & Carmen E. Alvarado (Owners) 24 Meade Street (Sheet 137A Lot 83) requesting variance to exceed maximum accessory use area, 40% permitted, 72% proposed - to allow for the addition of a 10'x12' shed. RA Zone, Ward 2.

Voting on this case:

Gerry Reppucci Jack Currier JP Boucher

Reynaldo Alvarado, 24 Meade Street, Nashua, NH. Mr. Alvarado said the shed is used for storage of yard items, lawn chairs. He said the shed matches the siding on the house. He said that the neighbors in the back don't have any issues with the shed.

Mr. Reppucci asked about the letter that the City sent on August 10, 2016, that in in July of 2014, he applied for a building permit for the shed, and it was determined that a variance was required and then the shed was just put up.

Mr. Alvarado said that he applied for it, and said he never got a response back, so now he's applying for the variance. He said that at that time, he was having issues with his mail delivery.

Mr. Currier said that when he took a drive by the house, he couldn't even see the shed. He said that the in-ground swimming pool takes up a huge amount of the accessory use area.

Mr. Falk said that the previous owners had a permit for the pool, it was back in 1982.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner as advertised. Mr. Currier said that as variance is needed to enable the applicant's proposed use of the property, the Board finds that there is a long-standing in-ground swimming pool that takes up a lot of the accessory use are percentage, and the pool also received a building permit back in 1982.

Mr. Currier said that the request is within the spirit and intent of the ordinance, a 10'x12' shed is not out of character with the neighborhood, and it's appropriately sized.

Mr. Currier said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the owner.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

10. Christopher Eckler (Owner) 4-6 Union Street (Sheet 38 Lot 37) requesting special exception to maintain expansion of a nonconforming use, two dwelling units approved, three dwelling units existing. GI Zone, Ward 7.

Voting on this case:

Gerry Reppucci Jack Currier - **recused** JP Boucher

Mr. Currier said he's known Mr. Eckler for many years, and his past practice is that he will have to recuse himself for this case.

Mr. Reppucci said that with only two voting members, it does not constitute a quorum, and the case cannot be heard this evening.

MOTION by Mr. Reppucci to Table the case to a date certain of September 27, 2016.

SECONDED by Mr. Currier

MOTION CARRIED UNANIMOUSLY 3-0.

11. Patrick & Elizabeth J. Belanger (Owners) 19 Cox Street (Sheet 58 Lot 26) requesting variance to exceed maximum accessory use area, 40% permitted, 72.4% proposed - to install an 18'x36' in-ground swimming pool. RA Zone, Ward 2.

Voting on this case:

Gerry Reppucci Jack Currier JP Boucher

Patrick Belanger, 19 Cox Street, Nashua, NH. Mr. Belanger said that they'd like to install an in-ground pool at their house, and it exceeds the maximum accessory use area. He said that the house is somewhat small, but the lot is large.

Mr. Belanger said that he has two small metal sheds on the property, and they will be removed, so the accessory use area will actually be a little less. He said that they will keep the one wood shed on the lot.

Mr. Reppucci asked if there would be a stipulation that the two metal sheds be removed, if that was acceptable.

Mr. Belanger said yes.

Mr. Currier said that if the house were somewhat bigger, they might not even be here asking for the variance.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application as advertised on behalf of the owner as advertised. Mr. Currier said that as variance is needed to enable the applicant's proposed use of the property, the Board finds that special conditions are that the lot is a large lot, and the house is small, and therefore the 72.4% requested is reasonable, and the lot can accommodate it.

Mr. Currier said that the request is within the spirit and intent of the ordinance, the proposed pool is a reasonable use.

Mr. Currier said that it will have no negative impact on surrounding properties. He said it is not contrary to the public interest, and substantial justice is served to the owner.

Mr. Currier said that for special conditions, the two small metal sheds are to be removed from the property within 30 days of when the pool goes in.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

MISCELLANEOUS:

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact.

REHEARING REQUESTS:

None.

MINUTES:

8-23-16:

No action taken on minutes.

ADJOURNMENT:

Mr. Reppucci called the meeting closed at 8:39 p.m.

Submitted by: Mr. Boucher, Clerk.

CF - Taped Hearing